



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commissioners
Staff Director
Deputy Staff Director
Acting General Counsel

FROM: Office of the Commission Secretary 

DATE: August 15, 2001

SUBJECT: Statement of Reasons for MUR 5100

Attached is a copy of the Statement of Reasons for
MUR 5100 signed by Chairman Danny L. McDonald,
Vice Chairman David M. Mason, Commissioner Karl J. Sandstrom,
Commissioner Bradley A. Smith, Commissioner Scott E. Thomas, and
Commissioner Darryl R. Wold.

This was received in the Commission Secretary's Office on
Tuesday, August 14, 2001 at 4:28 p.m.

cc: Vincent J. Convery, Jr.
Information Division
Press Office
Public Disclosure

Attachment

21.04.405.1564



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In re McCallion for Congress and
Darrell L. Paster, as treasurer

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MUR 5100

STATEMENT OF REASONS

On May 1, 2001, the Commission voted 5-0¹ to approve the General Counsel's recommendations, *inter alia*, finding reason to believe that the Respondents McCallion for Congress (Committee) and Darrell L. Paster, as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i), but taking no further action and sending an admonishment letter.² While the Commission is not required to issue this Statement of Reasons because it approved the General Counsel's recommendations, we do so to clarify the history of part of this matter and the rationale for our actions.

Factual and Procedural History

On August 7, 2000, a Prior Notice was sent to the Committee, stating that unopposed candidates who seek nomination in the primary election must file a Pre-Primary Report by August 31, 2000. On September 1, the Commission sent the Committee a Non-Filer Notice that it had failed to file a 12-Day Pre-Primary Election Report for the period July 1, 2000 through August 23, 2000. On September 8, the Commission voted 5-0 to publish the Committee as a non-filer. The Committee replied to the Non-Filer Notice by letter received September 8, stating that it acted in good faith and did not file the Report because it was not engaged in a primary campaign and did not engage in fundraising for a primary election.³

¹ Commissioner Thomas was absent for this meeting vote. He had approved the recommendations via tally vote, except for the minor correction needed at the meeting.

² The Commission also voted 5-0 to (1) find no RTB that the Respondents violated 2 U.S.C. §§ 434(a)(6)(A), 441b, 441c or 441e; (2) approve the appropriate letters, as recommended in the General Counsel's Report dated April 13, 2001, and (3) close the file.

³ The Committee's July Quarterly Report covering January 1, 2000 through June 30, 2000 reported receipts and disbursements as primary-related. The Committee's September 8 response indicated that the primary designations were "incorrectly checked."

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Staff in the Commission's Reports Analysis Division then decided the same day -- September 8 (under short time constraints and based upon the Committee's response and a misunderstanding by Commission staff of the Federal Election Campaign Act's reporting requirements) -- not to publish the Committee as a non-filer. The Commission has now clarified that the decision not to publish was erroneous.⁴

The Complaint underlying this MUR was filed on September 22 with the Commission, pointing out the Committee's reporting failure. The Committee responded to the Complaint by letter dated October 27, citing the argument in its letter received September 8 and also claiming that it justifiably relied on statements made in the media attributed to a Commission spokesperson indicating that no Pre-Primary Report was necessary.

On October 11, the Commission discussed this matter at length, including the possibility of making a public statement, but decided instead to direct the Office of General Counsel to activate this case at the earliest appropriate opportunity. Then, as mentioned previously, on May 1, the Commission voted unanimously to approve the General Counsel's recommendations: to find reason to believe that the Committee and its treasurer violated 2 U.S.C. § 434(a)(2)(A)(i), but take no further action because of the possible confusion concerning reporting obligations created by Commission staff.

The General Counsel's Report in this matter and this Statement, however, serve to correct any doubt concerning a committee's obligation to file a Pre-Primary Report when a candidate is not on a primary election ballot and even if all fundraising allegedly is directed toward the general election.⁵ Under § 434(a)(2)(A)(i)⁶ an authorized committee's reporting obligations essentially are generated by the candidate's status. Once spending or fundraising of a person seeking federal office crosses the \$5,000 threshold under the FECA (*see* 2 U.S.C. § 431(2)), the "candidate" is required to register a campaign committee and the committee is required to report pursuant to a stated schedule. Thus, even if no funds at all were raised or expended during a particular pre-election reporting period, an authorized candidate would be required to file a report.

In this matter, not only had Mr. McCallion filed on June 2 as a candidate with the Commission (*see* 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a)); he had been receiving and spending contributions before the New York primary qualifying date of July 13, and

⁴ The Committee claims that in a telephone conversation on September 8, a Commission Press Office employee told the Committee that no Pre-Primary Report had been required. The employee disputes this allegation.

⁵ The logic behind this requirement is evident when considering that contributors have a separate contribution limit for candidates for each election, including those in which candidates are unopposed. 2 U.S.C. § 441a(a)(1)(A); Advisory Opinion 1982-47.

⁶ The provision requires that in any calendar year during which there is a regularly scheduled election for which a candidate is seeking election, or nomination for election, the candidate's treasurer shall file a pre-election report "no later than the 12th day before... any election in which such candidate is seeking election, or nomination for election...."

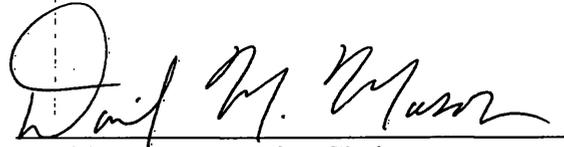
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had followed New York procedures to be designated a primary election candidate. He thus was “seeking . . . nomination for election” under § 434(a)(2)(A)(i).⁷

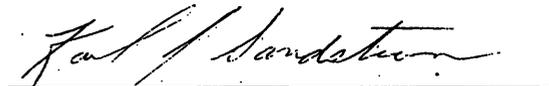
August 7, 2001



Danny L. McDonald, Chairman *By FJK*



David M. Mason, Vice Chairman



Karl J. Sandstrom, Commissioner



Bradley A. Smith, Commissioner



Scott E. Thomas, Commissioner



Darryl R. Wold, Commissioner

⁷ The Commission made clear years ago that being unopposed for a nomination and not on a ballot did not obviate a pre-primary reporting obligation. See Advisory Opinion 1986-21 (requiring pre-election reporting for unopposed convention nomination candidate and superseding prior advisory opinions to the extent they would require different result for unopposed candidate not on a primary ballot).

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